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JAN 30 1997

~~In re Application of
Christine Brakel et al.
Application No. 07/446,235
Filed: December 4, 1989
Attorney Docket No. Enz-47~~

In re Application of
Christine Brakel et al.
Application No. 08/479,999
Filed: June 28, 1994
Attorney Docket No. Enz-47(c)

DECISION GRANTING
PETITION

This is a decision on the petition to obtain a filing date filed September 9, 1996, in application No. 08/479,999. This is also a decision on the petitions to revive filed June 7, 1995, in application No. 07/446,235 and on September 9, 1996, in application No. 08/479,999.

On June 7, 1995, applicants filed a request for a continuation application under 37 CFR 1.60 (which papers were assigned application No. 08/479,999) based on prior application No. 07/446,235. However, the application papers deposited on June 7, 1995, omitted the copy of the prior application which are required to be supplied by the applicant by 37 CFR 1.60(b). Accordingly, on August 8, 1995, Application Processing Division mailed a Notice requiring a copy of the prior application as filed and stating that the filing date of the application would be the date of receipt of the omitted copy.

In response, on September 9, 1996, the petition to obtain a filing date and the petition to revive were filed in application No. 08/479,999. The petition to revive requests that the application be revived pursuant to 37 CFR 1.137. However, application No. 08/479,999 was correctly found to be incomplete under 37 CFR 1.60. Therefore, the application is not entitled to a filing date of June 7, 1995. Further, since the application has not been accorded a filing date, it was never a pending

application. Hence, it was never abandoned within the meaning of 37 CFR 1.137 and the petition under 37 CFR 1.137 is moot. Therefore, the petition to revive filed on September 9, 1996, in application No. 08/479,999 is dismissed. The petition fee will be refunded.

The petition to obtain a filing date alleges that a prior request for a continuation application under 37 CFR 1.62 based on prior application No. 07/446,235 was filed on June 28, 1994, along with a petition to revive the prior application. On January 17, 1997, applicants supplied a copy of a 37 CFR 1.62 request showing a certificate of mailing by Express Mail dated June 28, 1994, and a copy of a postcard receipt acknowledging receipt in the Patent and Trademark Office (PTO) on June 28, 1994, of a petition to revive and a "request for a continuation application under 37 CFR 1.62."

A review of the file of prior application No. 07/446,235 confirms that a petition to revive was filed therein on June 28, 1994. The file also reveals that the petition was granted in a Decision mailed July 22, 1994, for "the purposes of continuity only."

In view of the above, it is clear that a request for a continuation application under 37 CFR 1.62 based on prior application No. 07/446,235 was filed on June 28, 1994, and later misplaced in the PTO.

Therefore, the petition to obtain a filing date filed on September 9, 1996, is properly treated as a petition under 37 CFR 1.181 requesting that application No. 08/479,999 be accorded a filing date of June 28, 1994, and that the application be treated as a continuation application under 37 CFR 1.62, not under 37 CFR 1.60.

As so construed, the petition is granted.

In view of this decision, prior application No. 07/446,235 is considered expressly abandoned as of the filing date accorded application No. 08/479,999, i.e., June 28, 1994. See 37 CFR 1.62(g). Therefore, the petition to revive filed on June 7, 1995, is inappropriate and is dismissed. The petition fee will be refunded.

Since the original continuation application papers cannot be located in the PTO, the duplicate papers supplied on January 17, 1997, will be used for examination purposes.

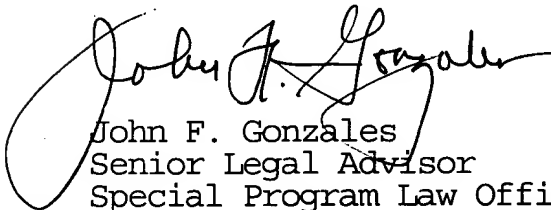
Applicants should notify this office if the original papers are subsequently discovered in the PTO so that the present duplicate file can be merged with the original papers and any duplicate fee

refunded.

The applications are being forwarded to the Office of Finance for crediting the \$625.00 petition fee paid in application No. 08/479,999 and the \$605.00 petition fee paid in application No. 07/446,235 to deposit account No. 05-1135.

Application No. 07/446,235 may then be returned to the files repository.

Application 08/479,999 will then be returned to Application Processing Division for further processing under 37 CFR 1.62, not under 37 CFR 1.60, with a filing date of June 28, 1994, using the copy of the application transmittal letter supplied on January 17, 1997.



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